

Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at <bmillin@fcc.gov>.

**C. Initial Regulatory Flexibility Analysis**

75. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>102</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice. The analysis is found in Appendix B. We request written public comment on the analysis. Comments must be filed by the same dates as listed in paragraph 70, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**D. Initial Paperwork Reduction Analysis**

76. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after date of publication in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>103</sup> we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

77. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 1-C804, Washington, D.C. 20554, or via the Internet to <jboley@fcc.gov>, and to Kristy LaLonde, Policy Analyst, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Docket Library, Room 10234, New Executive Office Building (NEOB), 725 17<sup>th</sup> Street, N.W., Washington, D.C. 20503, or via the Internet at <LaLonde@omb.eop.gov>.

**E. Further Information**

78. For further information concerning this rulemaking proceeding, contact Michael Connelly, Wireless Telecommunications Bureau, at (202) 418-0132, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554; or via the Internet to <michael.connelly@fcc.gov>.

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<sup>102</sup> 5 U.S.C. § 603.

<sup>103</sup> Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

**VII. ORDERING CLAUSES**

79. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, that this Notice of Proposed Rulemaking is hereby ADOPTED.

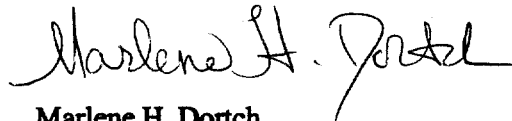
80. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in this Notice, and that comment is sought on these proposals.

81. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

82. IT IS FURTHER ORDERED that the Petitions for Reconsideration filed by the Industrial Telecommunications Association, Inc. on September 24, 2004, and by Small Business in Telecommunications filed on October 4, 2004, are DENIED, and that the informal requests for Commission action filed by the United Telecom Council on September 23, 2004, by Advanced Metering Data Systems on October 4, 2004, and by the National Association of Manufacturers/MRFAC on October 12, 2004, are DENIED to the extent they request a lift of the freeze on new 900 MHz applications.

83. IT IS FURTHER ORDERED that the Informal Opposition filed by Verizon Wireless on September 14, 2004 is DEFERRED pending the outcome of this proceeding.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

## APPENDIX A: PROPOSED RULES

## PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

: Sections 4(i), 11, 303(g), 303(r), and 302(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.7 is amended to read as follows:

**§ 90.7 Definitions.**

\* \* \* \* \*

*Major Economic Area (MEA).* An aggregation of Basic Economic Areas (BEAs) into 52 regions, including the Gulf of Mexico.

\* \* \* \* \*

*MEA-based license or MEA license.* A license authorizing the right to use a specified block of SMR spectrum with one of the 52 Major Economic Areas ("MEAs").

3. Section 90.210 is amended to add a footnote 4 to the frequency band 896-901/935-940 MHz that says:

Equipment used in this band licensed to MTA, EA or MEA or non geographic based systems shall comply with the emission mask provisions of §90.669.

4. Section 90.617 is amended by revising paragraph (c) and removing the undesignated text before Table 3 and Table 3 remains unchanged. The revisions read as follows:

**§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.**

(c) The channels listed in Table 3 are available to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in §90.603(c). These frequencies are available in non-border areas. Specialized Mobile Radio (SMR) systems may be authorized on these frequencies after [Effective date of Report and Order]. For multi-channel systems, channels may be grouped vertically or horizontally as they appear in the below table

Table 3 – Business/Industrial/Land Transportation Pool 896-901/935-940 MHz Band Channels

[199 Channels]

Channel Nos.

11-12-13-14-15	211-212-213-214-215
16-17-18-19-20	216-217-218-219-220
31-32-33-34-35	231-232-233-234-235
36-37-38-39-40	236-237-238-239-240
51-52-53-54-55	251-252-253-254-255

56-57-58-59-60	256-257-258-259-260
71-72-73-74-75	271-272-273-274-275
76-77-78-79-80	276-277-278-279-280
91-92-93-94-95	291-292-293-294-295
96-97-98-99-100	296-297-298-299-300
111-112-113-114-115	311-312-313-314-315
116-117-118-119-120	316-317-318-319-320
131-132-133-134-135	331-332-333-334-335
136-137-138-139-140	336-337-338-339-340
151-152-153-154-155	351-352-353-354-355
156-157-158-159-160	356-357-358-359-360
171-172-173-174-175	371-372-373-374-375
176-177-178-179-180	376-377-378-379-380
191-192-193-194-195	391-392-393-394-395
196-197-198-199-200	396-397-398-399

\* \* \* \* \*

(f) The channels listed in Table 6 are available for operations only to eligibles in the SMR category – which consists of Specialized Mobile Radio (SMR) stations and eligible end users. These frequencies are available in non-border areas.

The channels listed in Table 7 are available to Business/Industrial/Land Transportation or SMR eligibles for EA or MEA based licensing.

[200 Channels]

TABLE 6 – SMR CATEGORY 896- 901/935-940 BAND CHANNELS Block	Channel Nos.
A	1-2-3-4-5-6-7-8-9-10
B	21-22-23-24-25-26-27-28-29-30
C	41-42-43-44-45-46-47-48-49-50
D	61-62-63-64-65-66-67-68-69-70
E	81-82-83-84-85-86-87-88-89-90
F	101-102-103-104-105-106-107-108-109-110
G	121-122-123-124-125-126-127-128-129-130
H	141-142-143-144-145-146-147-148-149-150
I	161-162-163-164-165-166-167-168-169-170
J	181-182-183-184-185-186-187-188-189-190
K	201-202-203-204-205-206-207-208-209-210
L	221-222-223-224-225-226-227-228-229-230
M	241-242-243-244-245-246-247-248-249-250
N	261-262-263-264-265-266-267-268-269-270

O	281-282-283-284-285-286-287-288-289-290
P	301-302-303-304-305-306-307-308-309-310
Q	321-322-323-324-325-326-327-328-329-330
R	341-342-343-344-345-346-347-348-349-350
S	361-362-363-364-365-366-367-368-369-370
T	381-382-383-384-385-386-387-388-389-390

TABLE 7 - 896-901/935-940 MHZ BAND CHANNELS (199 CHANNELS) AVAILABLE AFTER [Effective date of Report and Order] FOR BUSINESS/INDUSTRIAL/LAND TRANSPORTATION OR SMR ELIGIBLES FOR EA OR MEA BASED LICENSING.

Block	Channel Nos.
AA	11-12-13-14-15-16-17-18-19-20
BB	31-32-33-34-35-36-37-38-39-40
CC	51-52-53-54-55-56-57-58-59-60
DD	71-72-73-74-75-76-77-78-79-80
EE	91-92-93-94-95-96-97-98-99-100
FF	111-112-113-114-115-116-117-118-119-120
GG	131-132-133-134-135-136-137-138-139-140
HH	151-152-153-154-155-156-157-158-159-160
II	171-172-173-174-175-176-177-178-179-180
JJ	191-192-193-194-195-196-197-198-199-200
KK	211-212-213-214-215-216-217-218-219-220
LL	231-232-233-234-235-236-237-238-239-240
MM	251-252-253-254-255-256-257-258-259-260
NN	271-272-273-274-275-276-277-278-279-280
OO	291-292-293-294-295-296-297-298-299-300
PP	311-312-313-314-315-316-317-318-319-320
QQ	331-332-333-334-335-336-337-338-339-340
RR	351-352-353-354-355-356-357-358-359-360
SS	371-372-373-374-375-376-377-378-379-380
TT	391-392-393-394-395-396-397-398-399

5. Section 90.619 is amended by revising paragraph (b)(1) and removing the undesignated text before Table 1 and Table 1 remains unchanged. The revisions read as follows:

**§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.**

(b) *Use of Frequencies in 900 MHz Band in Mexico Border Region.* All operations in the 896-901/935-940 MHz band within the Mexico border region shall be in accordance with international agreements between the U.S. and Mexico.

(1) The channels listed in Table 1 below are available to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in §90.603(c). These frequencies are available within the Mexico border region. Specialized

Mobile Radio (SMR) systems may be authorized on these frequencies after [Effective date of *Report and Order*]. For multi-channel systems, channels may be grouped vertically or horizontally as they appear in the following table. Channels numbered above 200 may be used only subject to the power flux density limits stated in paragraph (a)(2) of this section.

TABLE 1 – UNITED STATES/MEXICO BORDER AREA, BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 896-901/935-940 MHZ BAND

[199 Channels]

*Channels Nos.*

11-12-13-14-15	131-132-133-134-135
16-17-18-19-20	136-137-138-139-140
31-32-33-34-35	231-232-233-234-235
36-37-38-39-40	236-237-238-239-240
51-52-53-54-55	171-172-173-174-175
56-57-58-59-60	176-177-178-179-180
71-72-73-74-75	271-272-273-274-275
76-77-78-79-80	276-277-278-279-280
91-92-93-94-95	211-212-213-214-215
96-97-98-99-100	216-217-218-219-220
111-112-113-114-115	311-312-313-314-315
116-117-118-119-120	316-317-318-319-320
151-152-153-154-155	351-352-353-354-355
156-157-158-159-160	356-357-358-359-360
191-192-193-194-195	391-392-393-394-395
196-197-198-199-200	396-397-398-399
251-252-253-254-255	331-332-333-334-335
256-257-258-259-260	336-337-338-339-340
291-292-293-294-295	371-372-373-374-375
296-297-298-299-300	376-377-378-379-380

(2) The channels listed in Table 2A below are available for operations only to eligibles in the SMR category – which consists of Specialized Mobile Radio (SMR) stations and eligible end users. These frequencies are available in the Mexico border region.

The channels listed in Table 2B are available to Business/Industrial/Land Transportation or SMR eligibles for EA or MEA based licensing in the Mexico border region after [Effective date of *Report and Order*].

TABLE 2A – UNITED STATES-MEXICO BORDER AREA, SMR CATEGORY 896-901/935-940 MHZ BAND (200 CHANNELS)

Block	Channel Nos.
Channels numbered above 200 may only be used subject to the power flux density limits at or beyond the Mexico border as stated in paragraph (4) of this section.	

A	1-2-3-4-5-6-7-8-9-10
B	21-22-23-24-25-26-27-28-29-30
C	41-42-43-44-45-46-47-48-49-50
D	61-62-63-64-65-66-67-68-69-70
E	81-82-83-84-85-86-87-88-89-90
F	101-102-103-104-105-106-107-108-109-110
G	121-122-123-124-125-126-127-128-129-130
H	141-142-143-144-145-146-147-148-149-150
I	161-162-163-164-165-166-167-168-169-170
J	181-182-183-184-185-186-187-188-189-190
K	201-202-203-204-205-206-207-208-209-210
L	221-222-223-224-225-226-227-228-229-230
M	241-242-243-244-245-246-247-248-249-250
N	261-262-263-264-265-266-267-268-269-270
O	281-282-283-284-285-286-287-288-289-290
P	301-302-303-304-305-306-307-308-309-310
Q	321-322-323-324-325-326-327-328-329-330
R	341-342-343-344-345-346-347-348-349-350
S	361-362-363-364-365-366-367-368-369-370
T	381-382-383-384-385-386-387-388-389-390

TABLE 2B - 896-901/935-940 MHZ BAND CHANNELS (199 CHANNELS) AVAILABLE AFTER [Effective date of Report and Order] FOR BUSINESS/INDUSTRIAL/LAND TRANSPORTATION OR SMR ELIGIBLES FOR EA OR MEA BASED LICENSING IN UNITED STATES-MEXICO BORDER AREA.

Block	Channel Nos.
Channels numbered above 200 may only be used subject to the power flux density limits at or beyond the Mexico border as stated in paragraph (4) of this section.	
AA	11-12-13-14-15-16-17-18-19-20
BB	31-32-33-34-35-36-37-38-39-40
CC	51-52-53-54-55-56-57-58-59-60
DD	71-72-73-74-75-76-77-78-79-80
EE	91-92-93-94-95-96-97-98-99-100
FF	111-112-113-114-115-116-117-118-119-120
GG	131-132-133-134-135-136-137-138-139-140
HH	151-152-153-154-155-156-157-158-159-160
II	171-172-173-174-175-176-177-178-179-180
JJ	191-192-193-194-195-196-197-198-199-200
KK	211-212-213-214-215-216-217-218-219-220
LL	231-232-233-234-235-236-237-238-239-240

MM	251-252-253-254-255-256-257-258-259-260
NN	271-272-273-274-275-276-277-278-279-280
OO	291-292-293-294-295-296-297-298-299-300
PP	311-312-313-314-315-316-317-318-319-320
QQ	331-332-333-334-335-336-337-338-339-340
RR	351-352-353-354-355-356-357-358-359-360
SS	371-372-373-374-375-376-377-378-379-380
TT	391-392-393-394-395-396-397-398-399

\* \* \* \* \*

6. Section 90.621 is amended as follows:

**§ 90.621 Selection and assignment of frequencies.**

\* \* \* \* \*

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and geographic-area-based systems, will be assigned frequencies solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent licensees in Channel Blocks G through V, that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour (see §90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi). The following exceptions to these separations shall apply:

\* \* \* \* \*

7. Section 90.669 is amended to read as follows:

**§ 90.669 Emission limits.**

(a) Out-of-band emission requirements shall apply only to the "outer" channels included in an MTA, EA, or MEA licensee and to spectrum adjacent to interior channels used by incumbent licensees. The emission limits are as follows:

(1) On any frequency in a MTA, EA, or MEA geographic-area-based licensee's spectrum block that is adjacent to another licensee's frequency, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus  $10 \log_{10}(P)$  decibels or 80 decibels, whichever is the lesser attenuation.

\* \* \* \* \*

8. Section 90.671 is amended to read as follows:



**§ 90.671 Field strength limits.**

The predicted or measured field strength at any location on the border of the service area for 896-901/935-940 MHz geographic-area-based licensees shall not exceed 40 dBuV/m unless all co-channel bordering geographic-area-based licensees agree to a higher field strength. Geographic-area-based licensees are also required to coordinate their frequency usage with co-channel adjacent geographic-area-based licensees and all other affected parties. To the extent that a single entity obtains licenses for adjacent MTAs, EAs or MEAs on the same channel block, it will not be required to coordinate its operations in this manner. In the event that this standard conflicts with the geographic-area-based licensee's obligation to provide co-channel protection to incumbent licensees under §90.621(b), the requirements of §90.621(b) shall prevail.

9. Sections 90.678 through 90.680 are added to Subpart S as follows:

**Regulations Governing Licensing and Use of EA or MEA-Based  
BUSINESS/INDUSTRIAL/LAND TRANSPORTATION or SMR Systems in the 896-901/935-  
940 MHz Band**

\* \* \* \* \*

**§ 90.678 EA or MEA-Based BUSINESS/INDUSTRIAL/LAND TRANSPORTATION or  
SMR service areas.**

EA or MEA licenses for spectrum blocks AA, BB, through TT, in the 896-940 MHz band listed in table 7 of §90.617(f) are available in 175 Economic Areas (EAs) or 52 Major Economic Areas (MEAs) as defined in §90.7. Within these EAs or MEAs, licenses will be authorized in ten channel blocks as specified in table 7 of §90.617(f) through the competitive bidding procedures described in subpart U of this part.

**§ 90.679 EA or MEA-based Business/Industrial/Land Transportation or SMR system  
operations.**

(a) EA or MEA-based licensees authorized in the 896-901/935-940 MHz band pursuant to §90.678 may construct and operate base stations using any frequency identified in their spectrum block anywhere within their authorized licensed area, provided that:

(1) The EA or MEA licensee complies with any rules and international agreements that restrict use of frequencies identified in their spectrum block, including the provisions of §90.619 relating to U.S./Canadian and U.S./Mexican border areas.

(2) The EA or MEA licensee limits its field strength at any location on the border of the service area in accordance with §90.671 and masks its emissions in accordance with §90.669.

(c) In the event that the authorization for a previously authorized co-channel station within the geographic-area-based licensee's authorized spectrum block is terminated or revoked, the licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's licensing record. The EA or MEA licensee then will be able to construct and operate base stations using such frequency.

**§ 90.680 Authorization, construction and implementation of EA or MEA-based licenses and Grandfathering provisions for incumbent licensees.**

**Authorization, construction and implementation of EA or MEA-based licenses**

- (a) Geographic-area-based licenses in the 896–901/935–940 MHz band will be issued for a term not to exceed ten years.
- (b) Each geographic-area-based licensee in the 896–901/935–940 MHz band must demonstrate, through a showing to the Commission ten years from the date of license grant, that it is providing substantial service within its service area.
- (c) Geographic-area-based licensees who fail to make a convincing showing of substantial service by the end of the tenth year after grant of authorization will forfeit the portion of the geographic-area-based license that exceeds licensed facilities constructed and operating on the date of the license grant.

**Grandfathering provisions for incumbent licensees**

- (a) An incumbent licensee's service area shall be defined by its originally-licensed 40 dBu field strength contour. Incumbent licensees are permitted to add new or modify transmit sites in this existing service area so long as the original 40 dBu field strength contour is not expanded.

## Appendix B

## Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>104</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided in paragraph 70 of the item. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>105</sup> In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>106</sup>

**A. Need for, and Objectives of, the Proposed Rules**

In this *Notice*, the Commission proposes amendments to Part 90 of the Commission's Rules to facilitate more flexible use of the 199 channels allocated to the Business and Industrial Land Transportation (B/ILT) Pool in the 896-901/935-940 MHz (900 MHz) bands.<sup>107</sup> The Commission proposes to permit any use of the B/ILT channels in the 900 MHz band that is consistent with the band's fixed and mobile allocations,<sup>108</sup> and to license the remaining spectrum or "white space" using a geographic area licensing scheme and propose competitive bidding rules to select from among mutually exclusive applicants. The Commission also sets forth proposals for auction procedures for the remaining 900 MHz spectrum in the B/ILT category channels. The Commission believes these proposed rules will serve its twin goals of providing service to the public consistently and expeditiously, and allowing the marketplace to respond to consumer demands, and notes that allowing for flexible use of this spectrum will greatly aid in facilitating band reconfiguration occurring at 800 MHz.<sup>109</sup> The Commission believes that the rules and policies proposed herein strike a fair and equitable balance between the interests of incumbent B/ILT licensees, and those seeking to provide geographic area service, and further believes that these rules and policies will promote competition, while providing opportunities for incumbents to continue to pursue their business plans.

Concurrently with the adoption of the *Notice*, the Commission addresses the petitions for reconsideration, informal letter requests, and informal opposition filed in response to the freeze placed on new applications for 900 MHz licenses on September 17, 2004.<sup>110</sup>

<sup>104</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121, Title II, 110 Stat. 857 (1996).

<sup>105</sup> See 105 § 603(a).

<sup>106</sup> See 105 § 603(a).

<sup>107</sup> 47 C.F.R. § 90.617(b), Table 2B – Industrial/Land Transportation Category 896-901/935-940 MHz Band Channels (99 Channels); § 90.617(c), Table 3B – Business Category 896-901/935-940 MHz Band Channels (100 Channels) (2003).

<sup>108</sup> 47 C.F.R. § 2.106.

<sup>109</sup> See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Report and Order*, 19 FCC Rcd 14969 (2004).

<sup>110</sup> See "Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band," *Public Notice*, DA 04-3013 (WTB PSCID rel. Sept. 17, 2004).

**B. Legal Basis**

The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333.

**C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.<sup>111</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>112</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>113</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>114</sup>

**Small Businesses.** Nationwide, there are a total of 22.4 million small businesses, according to SBA data.<sup>115</sup>

**Small Organizations.** Nationwide, there are approximately 1.6 million small organizations.<sup>116</sup>

**Small Governmental Jurisdictions.** The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."<sup>117</sup> As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.<sup>118</sup> This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

The Commission has determined that 1,040 licenses will be awarded in the 896-901 MHz and 935-940 MHz B/ILT MHz bands; the Commission does not yet know how many applicants or licensees

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<sup>111</sup> 5 U.S.C. § 603(b)(3).

<sup>112</sup> 5 U.S.C. § 601(6).

<sup>113</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>114</sup> 15 U.S.C. § 632.

<sup>115</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>116</sup> Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

<sup>117</sup> 5 U.S.C. § 601(5).

<sup>118</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299-300, Tables 490 and 492.

in these bands will be small entities. Thus, the Commission assumes, for purposes of this IRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our proposed small business definitions for these bands. The Commission invites comment on this analysis.

**Wireless Service Providers.** The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"<sup>119</sup> and "Cellular and Other Wireless Telecommunications."<sup>120</sup> Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.<sup>121</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.<sup>122</sup> Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.<sup>123</sup> Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.<sup>124</sup> Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

**Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.<sup>125</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>126</sup> According to Commission data, 447 carriers reported that they were engaged in the provision of wireless telephony.<sup>127</sup> We have estimated that 245 of these are small under the SBA small business size standard.

**Broadband Personal Communications Service.** The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the

<sup>119</sup> 13 C.F.R. § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

<sup>120</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>121</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

<sup>122</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

<sup>123</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

<sup>124</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

<sup>125</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>126</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>127</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

three previous calendar years.<sup>128</sup> For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>129</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>130</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>131</sup> On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.<sup>132</sup>

On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses.<sup>133</sup> Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

**Cellular Licensees.** The SBA has developed a small business size standard for wireless firms within the broad economic census category “Cellular and Other Wireless Telecommunications.”<sup>134</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.<sup>135</sup> Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.<sup>136</sup> Thus, under this category and size standard, the great majority of firms can be considered small. According to Commission data, 447 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony

<sup>128</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850-7852, paras. 57-60 (1996); see also 47 C.F.R. § 24.720(b).

<sup>129</sup> See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852, para. 60.

<sup>130</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

<sup>131</sup> FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (released January 14, 1997).

<sup>132</sup> See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

<sup>133</sup> See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

<sup>134</sup> 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>135</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

<sup>136</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

services, which are placed together in the data.<sup>137</sup> We have estimated that 245 of these are small, under the SBA small business size standard.<sup>138</sup>

#### **D. Description of Projected Reporting, Recordkeeping, and other Compliance Requirements**

The *Notice* proposes to amend Part 90 of the Commission's Rules to facilitate more flexible use of the 199 channels allocated to the Business and Industrial Land Transportation (B/ILT) Pools in the 896-901/935-940 MHz (900 MHz) bands, to permit any use of the B/ILT channels in the 900 MHz band that is consistent with the band's fixed and mobile allocations. It also proposes to license the unencumbered spectrum through geographic area licensing. Accordingly, the Commission proposes service rules, including licensing, technical and operational rules for the new geographic licensees, and seeks comment on defining the rights of B/ILT licensees already operating in the 900 MHz band. The Commission also seeks comment on competitive bidding rules and procedures to be used in the event that mutually exclusive applications are filed for the 900 MHz proposed geographic licenses.

In paragraphs 12-14, the Commission proposes service rules for the new 900 MHz channels that would provide licensees with the flexibility to employ this spectrum for any use permitted by the United States Table of Frequency Allocations contained in Part 2 of our rules (*i.e.*, fixed or mobile services), believing that such flexibility fully meets criteria set forth in section 303(y) of the Communications Act of 1934, as amended. The *Notice* tentatively concludes that such use would be consistent with applicable international agreements, and that the public interest benefits of flexibility are numerous, and notes that the Commission has identified the establishment of maximum feasible flexibility in both spectrum designations and allocations and service rules as a critical means of ensuring that spectrum is put to its most beneficial use. The Commission believes that the economic efficiencies of flexibility foster, rather than deter, technology development and investment in communications services and systems.

In paragraphs 17-19, the Commission seeks comment on its proposal to license this 900 MHz spectrum using geographic area licensing, believing that such a licensing scheme is well-suited for the types of fixed and mobile services that will likely develop in this overlay band. The Commission invites commenters to explain any opposition and the costs and benefits associated with any preferable licensing proposal. In paragraphs 21-25, the Commission seeks comment on its proposal to adopt Major Economic Areas ("MEAs"), or, in the alternative, Economic Areas ("EAs") as the appropriate geographic size. On the one hand, allowing the new 900 MHz licensees the use of frequencies for systems providing coverage across wide areas will increase spectrum efficiency, provide better quality service to end users, and allow service to reach potential end users that may otherwise be without adequate communication options, and that the MEA-based licensees will be in a better position to address the needs of system users, customers, or lessees that have wide-area requirements; on the other hand, EAs, which are more than three times the number of delineated economic areas than MEAs, may facilitate the ability of incumbents and other small and medium-sized operators of smaller systems to participate in geographic area licensing. Adopting an EA-based licensing scheme may permit small bidders and rural companies wishing smaller license areas to obtain them directly at auction rather than facing the uncertainty and transaction costs of working out post-auction partitioning agreements.

<sup>137</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

<sup>138</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

In paragraphs 26-30, the *Notice* proposes to license the 900 MHz flexible-use channels in nineteen blocks of ten contiguous channels each, and one block of nine contiguous channels, with each ten-channel block separately licensed. Under the Commission's proposal, applicants would be permitted to aggregate blocks if they wish, without eligibility restriction for any channel block. The Commission seeks comment on whether the proposed 900 MHz channel block plan strikes a balance in affording small, medium and large operators the opportunity to obtain sufficient spectrum to establish viable and competitive wide-area systems, and whether the plan offers a middle ground between larger channel blocks that may block entry to new, smaller operators, and smaller block sizes that may hinder wide-area operations.

In paragraphs 45-51, the *Notice* proposes that the new 900 MHz licensees submit to the Commission a showing of substantial service in their licensed area within ten years of being licensed. In making this proposal, the Commission notes that a population-based benchmark may be a considerable obstacle for the provision of services in rural or sparsely populated areas, and that population-based coverage requirements may be difficult to achieve due to existing band encumbrances. The Commission also believes that the ten-year substantial service requirement provides greater flexibility for parties interested in entering into spectrum leasing arrangements involving this spectrum.

In paragraphs 58-63, the Commission proposes small business bidding credits to further the goals of ensuring that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and promoting economic opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. To that end, the Commission proposes a 10 percent bidding credit for small business and a 15 percent bidding credit for very small businesses.

The Commission requests comment on how these proposed rules may be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

**E. Steps taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.<sup>139</sup>

As noted above, the *Notice* proposes to establish small business bidding credits to further the goals of ensuring that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, with a 10 percent bidding credit for small business and a 15 percent bidding credit for very small businesses. In addition, the *Notice* solicits comment on a number of proposals and alternatives regarding the service rules for the 900 MHz band, and seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. The Commission believes the

<sup>139</sup> 5 U.S.C. § 603(c).



proposed rules will open up economic opportunities to a variety of spectrum users, which could include small businesses. Because the Commission seeks to minimize, to the extent possible, the economic impact on small businesses, the *Notice* sets forth various proposals and alternatives for parties to consider.

The *Notice* invites comment on various alternative licensing and service rules and on a number of issues relating to how the Commission should craft service rules for this spectrum that could have an impact on small entities. The *Notice* proposes a geographic area approach to service areas, as opposed to a station-defined licensing approach, and seeks comment on the appropriate size of service areas. Specifically, the *Notice* asks for comment on whether smaller geographic areas would better serve the needs of small entities.

The regulatory burdens proposed in the *Notice* appear necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission invites comment on any additional significant alternatives parties believe should be considered and on how the approach outlined in the *Notice* will impact small entities, including small businesses and small government entities.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

None.

IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.